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In re Application of	:	DECISION ON
McStay et al	:	
PCT No.: PCT/EP2005/002270	:	
Application No: 10/591,611	:	
Int. Filing Date: 02 March 2005	:	PETITION UNDER
Priority Date: 05 March 2004	:	
Attorney's Docket No.: 27667U	:	
For: FLUOROMETER	:	37 CFR 1.47(a)

This is in response to the "PETITION UNDER 37 CFR 1.47(a) FOR FILING WHEN AN INVENTOR REFUSES TO SIGN" filed on 15 October 2007. The petition fee of \$200.00 has been paid by check.

BACKGROUND

On 02 March 2005, petitioner filed international application PCT/EP2005/002270, which claimed priority to an earlier application filed 05 March 2004.

On 05 September 2006, petitioner filed in the United States Patent & Trademark Office a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, inter alia, the U.S. basic national fee. No executed oath or declaration accompanied the above papers.

On 14 May 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date... is not executed in accordance" must be submitted within two (2) months from the date mailing or by 32 months from the priority date for the application, whichever is later. Failure to properly respond will result in abandonment.

On 15 October 2007, petitioner filed the present petition, a declaration in support of filing on behalf of nonsigning inventors Anton FORTE and Terrence GREENAWAY accompanied, inter alia, an executed Declaration without their signatures.

DISCUSSION

PETITION UNDER 37 CFR 1.47(a):

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

REFUSAL TO JOIN:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Petitioner has satisfied requirements (1) - (4) of 37 CFR 1.47(a).

Regarding requirement (1), petitioner has provided the fee under 37 CFR 1.17(h).

Regarding requirement (2), in this case, it has been sufficiently demonstrated as shown by the declaration of Alan WALLACE that a copy of the application papers mailed and received by non-signing inventors, and that they (Anton Forte on July 24 and Terry Greenaway on July 25, 2007) contacted Mr. WALLACE and they refused to sign the form.

Regarding requirement 3, petitioner has provided a statement of the last known address of the missing inventor.

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Co Down BT22 2XA United Kingdom

Mr. Terry GREENWAY
14 Gilnahirk Rise
Belfast, BT5 7DT United Kingdom

Regarding requirement 4, petitioner has provided an executed declaration signed by Daniel McSTAY and Khalid THABETH on their behalf and on the behalf of the nonsigning joint inventors Anton FORTE and Terry GREENWAY.

Petitioner has satisfied items (1), (2), (3), and (4) under 37 CFR 1.47(a), thus completing the requirements under 37 CFR 1.47(a).

CONCLUSION

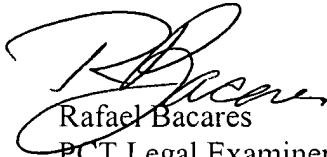
The petition under 37 CFR 1.47(a) is **GRANTED**.

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of **15 October 2007**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371.



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